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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 1075.

THE NEW YORK TRUST COMPANY, as surviving
Trustee of Seaboard Air Line Railway Refunding
Mortgage,

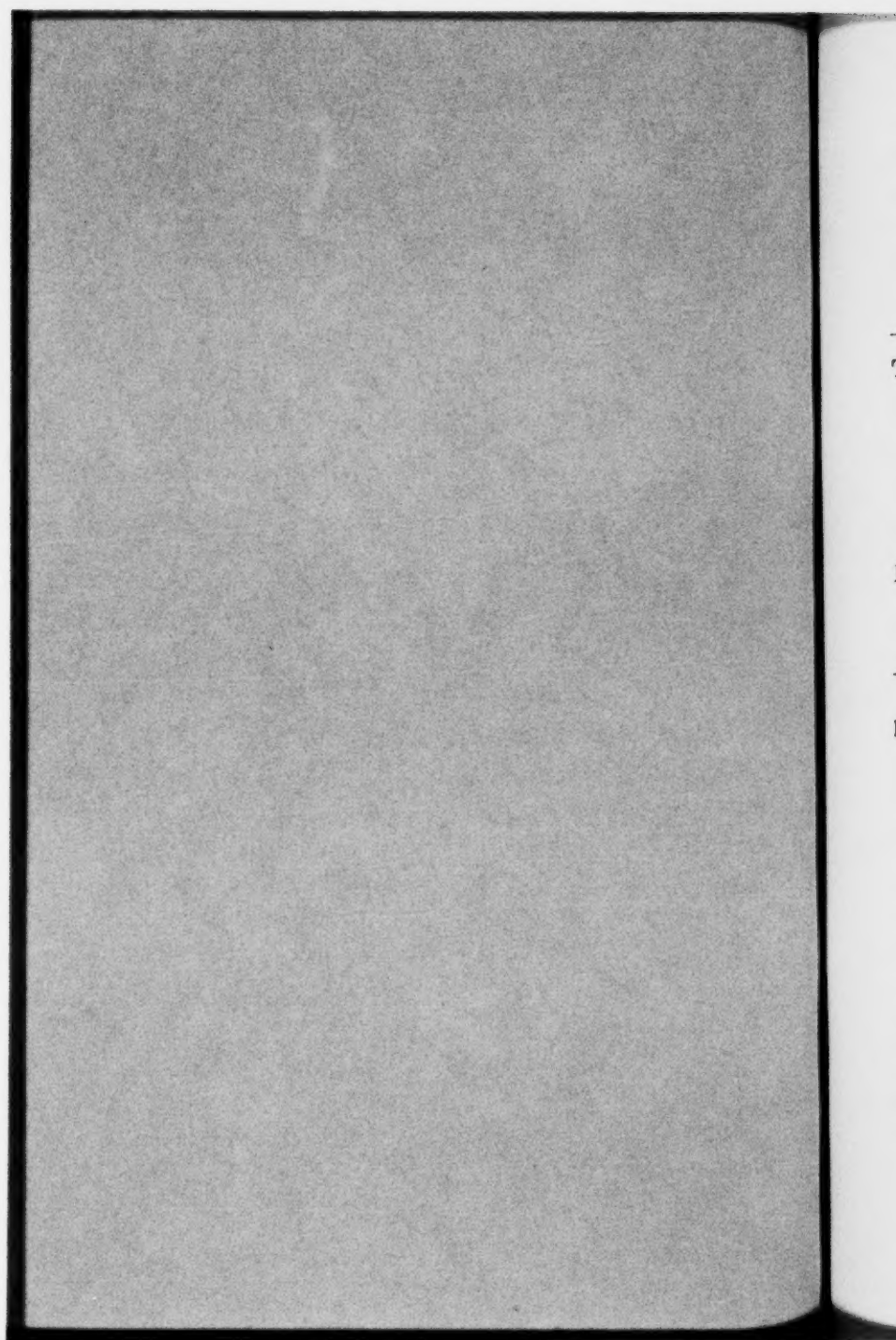
Petitioner,

against

MARYLAND TRUST COMPANY, as Successor Trustee
under Seaboard Air Line Railway First Mortgage.

**PETITION FOR REHEARING OF PETITION FOR A WRIT
OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FOURTH CIRCUIT.**

ALBRIDGE C. SMITH,
GEORGE M. LANNING,
IRWIN L. TAPPEN,
For the Petitioner.



Supreme Court of the United States

OCTOBER TERM, 1941.

No. 1075.

THE NEW YORK TRUST COMPANY, as
surviving Trustee of Seaboard Air
Line Railway Refunding Mortgage,
Petitioner,

against

MARYLAND TRUST COMPANY, as Suc-
cessor Trustee under Seaboard Air
Line Railway First Mortgage.

PETITION FOR REHEARING OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

*To the Honorable the Chief Justice of the United States and
the Associate Justices of the Supreme Court of the
United States:*

Your petitioner, THE NEW YORK TRUST COMPANY, as surviving Trustee of Seaboard Air Line Railway Refunding Mortgage, prays for a rehearing upon its petition for a writ of certiorari to review the decree of the United States Circuit Court of Appeals for the Fourth Circuit filed herein on March 26, 1942, and denied on April 27, 1942.

The essential facts and the question presented are contained in said petition. Jurisdiction of this Court is invoked

under Section 240(a) of the Judicial Code, as amended, by the Act of February 13, 1925 (C. 229, Stat.; 28 U. S. C. Sec. 347 (a)). The majority and dissenting opinions of the Circuit Court in the pending case are reported in *Powell v. Maryland Trust Co.*, 125 F. (2d) 260.

Reasons for Granting the Writ.

The petition in accordance with paragraph 5(b) of Rule 38 of this Court, set forth the following reasons for allowing the writ:

“1. The Circuit Court of Appeals has decided an important question of Maryland law in a way probably in conflict with Maryland decisions.

2. The Circuit Court of Appeals has so far departed from the Rule of *Erie R. Co. v. Tompkins*, *supra*, as to call for an exercise of this Court's power of supervision.”

Subsequent to the filing date of the petition, *Stentor Electric Mfg. Co. v. Klaxon Co.*, 3 Cir., 125 F. (2d) 820 (decided February 9, 1942), was published in the Federal Reporter under date of April 6, 1942, and was not in general circulation until several days thereafter.

This case and the *Stentor Electric Mfg. Co.* case, *supra*, present in vivid contrast two diametrically opposite viewpoints in regard to the rule of *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, where a precise precedent does not exist in local decisions covering a particular state of facts.

In the pending case, on a question of Maryland common law the majority of the Fourth Circuit Court refused guidance from admittedly analogous Maryland decisions and felt free to revert to federal precedent relating to the nature of a stock dividend (*Gibbons v. Mahon*, 136 U. S. 549) even

though that case had been specifically rejected by Maryland (*Thomas v. Gregg*, 78 Md. 545). This method is the very antithesis of ascertaining Maryland law from "all the available data", which were manifold. The majority below, though paying lip service to the *Erie Railroad* case, did in fact disregard the available Maryland data and apply federal general common law, if such a thing still exists. Moreover, to make matters worse, the "federal common law" which the majority did apply had been consistently and repeatedly repudiated by the Court of Appeals of Maryland, as the dissenting opinion of Soper, J., so ably demonstrates. Under what theory can this extreme and hostile approach be deemed compliance with the *Erie Railroad* case?

On the other hand, the Third Circuit Court in the *Stentor Electric Mfg. Co.* case felt bound to ascertain state law "from all the available data" and diligently searched for "the approach of the Delaware Supreme Court" to the legal problem there involved (125 F. (2d) pp. 823, 824), notwithstanding that there were lacking analogous state court decisions such as exist in the pending case.

These two conflicting decisions create such obvious confusion as to call for clarification by this Court. A petition for a writ of certiorari to the Circuit Court of Appeals for the Third Circuit was filed May 9, 1942 in the *Stentor Electric Mfg. Co.* case, *supra* (October Term 1941, No. 1229), in which at pages 13 *et seq.* the present case is cited and discussed as the chief cause of conflict among the judicial circuits.

The rising tide of chaos will continue to plague litigants and the lower federal courts until doubts are resolved. We venture to suggest that the present case and the *Stentor Electric Mfg. Co.* case, representing as they do extreme conflicting positions, furnish ideal instruments for a test

by this Court. May it not be that the true approach lies somewhere in between the two extremes?

In view of the foregoing additional reasons, your petitioner respectfully requests a rehearing and asks that its petition for a writ of certiorari, filed March 26, 1942, be granted.

The undersigned counsel for your petitioner certify that this petition is presented in good faith and not for delay.

Dated, May 16, 1942.

ALBRIDGE C. SMITH,
GEORGE M. LANNING,
IRWIN L. TAPPEN,
For the Petitioner.

